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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/037,311	11/09/2001	Natasha V. Raikhel	MSU 4.1-633	4340	
21036	7590 04/15/2003				
MCLEOD MOYNE & REILLY, P.C.			EXAMINER		
2190 COMMO OKEMOS, M	ONS PARKWAY I 48864		KUBELIK,	KUBELIK, ANNE R	
			ART UNIT	PAPER NUMBER	
•			1638		
			DATE MAILED: 04/15/2003	13	

Please find below and/or attached an Office communication concerning this application or proceeding.

BEST AVAILABLE COPY

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s)							
Examiner		Application No.	Applicant(s)				
Anne R. Kubelik 1638		10/037,311	RAIKHEL ET AL.				
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Repty A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Exercision of term may be available under the provisions of 37 CER 1.13(a). In no event, however, may a raphy be simely filled to the provision of the provision of 37 CER 1.13(a). In no event, however, may a raphy be simely filled to the provision of the provisio	Office Action Summary	Examiner	Art Unit				
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This action is FINAL. 2b This action is non-final.	<u> </u>						
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1 and 2 is/are pending in the application. 4a) Of the above claim(s)							
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A) Claim(s) 1 and 2 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) is/are objected to. 8) Claim(s) is/are objected to. 8) Claim(s) is/are objected to by the Examiner. 4Application Papers 9) The specification is objected to by the Examiner. 10) The specification is objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1 Certified copies of the priority documents have been received in Application No 3 Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received. 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121. **Attachment(s) 10) Notice of References Cited (PTO-892) 11) Notice of Informal Patent Application (PTO-152)	closed in accordance with the practice under the	•	•				
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Art Unit: 1638

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-2, drawn to nucleic acids encoding plant fucosyl transferases and transgenic plants and plant cells expressing controlled levels of fucosyl transferase, classified in class 800, subclass 298.

II. Claim 1, drawn to fucosyl transferase gene products, classified in class 530, subclass 370.

The inventions are distinct, each from the other because of the following reasons:

Claim 1 link(s) inventions I and II. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claim 1. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Inventions I and II are independent and distinct. DNA and protein differ in composition, structure and function. Furthermore, the protein of the second invention could be made by a process other than the expression of the gene of the first invention, such as chemical synthesis or



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purification from the natural source, and the DNA of the first invention may be used for processes other than the production of protein, such as a nucleic acid hybridization assay.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, fields of search, and classification, restriction for examination purposes as indicated is proper.

Applicant is advised that for the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, whose telephone number is (703) 308-5059. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (703) 306-3218. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 308-0198.

Anne R. Kubelik, Ph.D. April 10, 2003

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